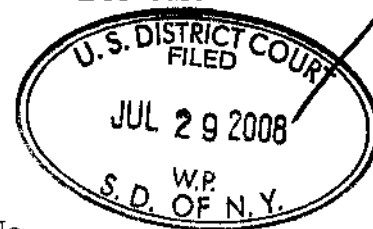


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF Case



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ADRIAN HUFF, as Chairman of the Board of Trustees of
TEAMSTERS LOCAL 445 CONSTRUCTION DIVISION
WELFARE, PENSION and ANNUITY FUNDS and
TEAMSTERS LOCAL 445 EDUCATION and TRAINING
FUND,

Civil Action No.
08-cv-1907 (CLB)(GAY)

Plaintiff,

- against -

DEFAULT JUDGMENT

REALIFE LAND IMPROVEMENT, INC.,

Defendant.
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WHEREAS, at all times material, up to this time, defendant REALIFE LAND IMPROVEMENT, INC. CORP. (Defendant) entered into a collective bargaining agreement ("Labor Agreement") with the Union. The Labor Agreement and Declarations of Trust (Trust Agreements) provided, among others, that Defendant would make timely payment of contributions to the Teamsters Local 445 (Union) Construction Division Welfare (Welfare Fund), Pension (Pension Fund), and Annuity Funds (Annuity Fund) and Teamsters Local 445 Education and Training Fund (Education and Training Fund) (collectively referred to as the Funds) on behalf of employees of Defendant within the bargaining unit represented by the Union;

WHEREAS, pursuant to the Labor Agreement and Trust Agreements, the Funds are empowered to conduct an audit of Defendant's books and records to determine whether Defendant is in compliance with its obligation to contribute to the Funds;

WHEREAS, despite the passage of dates on which Defendant was required to pay contributions, and despite the Welfare Fund's demand, Defendant has failed, neglected and refused to pay to the Welfare Fund contributions due in the amount of \$4,671.95 for the periods from June

2007 through September 2007;

WHEREAS, despite the passage of dates on which Defendant was required to pay contributions, and despite the Pension Fund's demand, Defendant has failed, neglected and refused to pay to the Pension Fund contributions due in the amount of \$7,801.27 for the periods from June 2007 through September 2007;

WHEREAS, despite the passage of dates on which Defendant was required to pay contributions, and despite the Annuity Fund's demand, Defendant has failed, neglected and refused to pay to the Annuity Fund contributions due in the amount of \$4,407.50 for the period from June 2007 through September 2007;

WHEREAS, despite the passage of dates on which Defendant was required to pay contributions, and despite the Education and Training Fund's demand, Defendant has failed, neglected and refused to pay to the Education and Training Fund contributions due in the amount of \$264.45 for the periods from June 2007 through September 2007;

WHEREAS, as a result of Defendant's failure to make timely payment of contributions, defendant is responsible for a ten percent (10%) late charge on the balance of unpaid, delinquent Funds contributions;

WHEREAS, despite its obligation to pay late charges for untimely paid contributions which Defendant was required to pay for unpaid, delinquent Welfare, Pension, Annuity and Education and Training Funds contributions for the periods from June 2007 through September 2007, and despite the Funds' demand, Defendant failed to make payment of late charges owed in the amount of \$1,714.52;

WHEREAS, as a result of the foregoing, plaintiff on behalf of the Funds sustained damages in the total amount of at least \$18,859.69, including delinquent Welfare Fund contributions due and unpaid in the amount of \$4,671.95; delinquent Pension Fund contributions due and unpaid in the amount of \$7,801.27; delinquent Annuity Fund contributions due and unpaid in the amount of \$4,407.50; delinquent Education and Training Fund contributions due and unpaid in the amount of \$264.45; plus late charges assessed against late contribution payments due and unpaid in the amount of \$1,714.52;

WHEREAS, as a result of Defendant's failure to cure its failures to contribute, the Funds commenced a lawsuit against Defendant for collection of contributions pursuant to § 301 of the Labor Management Relations Act of 1947, as amended (LMRA), 29 U.S.C. § 185 and pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§ 1001, *et seq*;

WHEREAS, on February 26, 2008, Plaintiff filed with the Clerk of Court its Summons and Complaint;

WHEREAS, on May 8, 2008, Plaintiff effectuated proper service of the Summons and Complaint on Defendant by delivering to and leaving with Carol Vogt, authorized agent in the office of the Secretary of the State, State of New York, personally in the office of the Secretary of State of New York;

WHEREAS, on May 27, 2008, Plaintiff filed with the Clerk of Court its proof of service on Defendant;

WHEREAS, Defendant has failed to plead or otherwise defend that action and the time for Defendant to answer the Complaint has expired;

WHEREAS, pursuant to § 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), and the Labor and Trust Agreements, Defendant is liable for all unpaid, delinquent Welfare, Pension, Annuity and Education and Training contributions, together with interest on the unpaid contributions at the rate set forth in the Labor Agreements and Trust Agreements, plus an additional amount equal to the greater of:

- (i) interest on the unpaid contributions; or
- (ii) liquidated damages provided for under the Trust Agreements and Labor Agreement, not in excess of 20% of the amount that is due.

together with audit fees, reasonable attorney's fees costs and disbursements incurred;

WHEREAS, pursuant to the Labor Agreement, Defendant is liable for all untimely contributions to the Funds; it is

ORDERED, ADJUDGED, AND DECREED that judgment in the amount of \$25,851.88 is entered in favor of PLAINTIFF ADRIAN HUFF, as Chairman of the Board of Trustees of TEAMSTERS LOCAL 445 CONSTRUCTION DIVISION WELFARE, PENSION and ANNUITY FUNDS and TEAMSTERS LOCAL 445 EDUCATION and TRAINING FUND, and against DEFENDANT REALIFE LAND IMPROVEMENT, INC., calculated as follows:

- A. \$17,145.17 for all contributions unpaid to the Funds for the period from June 2007 through September 2007;
- B. \$3,429.03 for liquidated damages in the amount of twenty percent (20%) of the unpaid contributions as provided for under the Trust Agreements and Labor Agreement;

- C. \$1,714.52 for all late payment charges due and unpaid to the Funds for the period from June 2007 through September 2007;
- D. \$2,755.00 for reasonable attorneys' fees from the commencement of this action to date of filing of this Default Judgment;
- E. \$808.16 for the costs of this action to date;

for a total liquidated amount of \$25,851.88; and, it is further

ORDERED, that interest and liquidated damages will continue to accrue until the judgment is paid; and it is further

ORDERED, that the judgment rendered by this Court on this day in favor of PLAINTIFF ADRIAN HUFF, as Chairman of the Board of Trustees of TEAMSTERS LOCAL 445 CONSTRUCTION DIVISION WELFARE, PENSION and ANNUITY FUNDS and TEAMSTERS LOCAL 445 EDUCATION and TRAINING FUND, be entered as a final judgment against DEFENDANT REALIFE LAND IMPROVEMENT, INC. and the Clerk of Court is directed to enter the judgment directly.

Dated:

SO ORDERED:

7/28/08

, U.S.D.J.